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BA 10/1/02

Docket No.: 041-1987

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of

Satoshi BAN et al.

Serial No. 09/003,812

Filed: 01/07/1998

For: . MULTIPURPOSE EARPHONE SET (as amended)

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: Group Art Unit: 2644  
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: Examiner: GRIER, LAURA A.  
:**REQUEST FOR CORRECTED ACTION AND RESTARTED RESPONSE TIME**

ASSISTANT COMMISSIONER FOR PATENTS

Washington, D.C. 20231

Dear Sir:

The pending Official Action, dated July 18, 2002, which allows claim 9 in the above application, makes it impossible for applicants to ascertain the basis for rejection of claims 8 and 10, and thus to provide a proper response thereto.

It is noted that in prior prosecution all claims were rejected over a combination of the Young III and Slater references.

During an interview conducted May 7, 2002, it was argued that these references fail to support rejection of the claims. In response, the Examiner has allowed claim 9. However, for the following reasons, the rejection of claims 8 and 10 cannot be comprehended.

Claim 8, an independent claim, is rejected over Young III in view of a newly cited reference to Porco.

On the other hand, claim 10, which depends from claim 8, is rejected over Young III in view of Slater, without any reference to Porco.

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If the rejection is taken on face value, then the Action has overlooked the fact that, by depending from claim 8, claim 10 includes all features of claim 8 and thus can only be rejected over art which teaches the features of claim 8, as well as the explicit language of claim 10. Therefore, on its face, as Young and Slater fail to support rejection of claim 8, the references clearly cannot support rejection of claim 10, and the rejection of claim 10 over Young in view of Slater is improper.

On the other hand, if claim 10 is indeed being rejected over Young in view of Slater, then it must be understood that claim 8 was intended to be similarly rejected, and that it was the Examiner's intent to reject claim 8 over Young in view of *either* Slater *or* Porco.

However, no such rejection has been made.

Therefore, applicants can not fashion a proper response to the inconsistent rejections. Applicants cannot be required to provide a response to a hypothetical rejection, which may have been intended but was not made.

In view of the foregoing inconsistency, and the fact that a response thereto cannot be made, it is respectfully requested that a Corrected Action be provided, and that the time for response thereto be restarted.

Respectfully submitted,

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October 1, 2002

<b>CERTIFICATE OF FACSIMILE TRANSMISSION</b> I hereby certify that this paper is being facsimile transmitted to the United States Patent and Trademark Office, Fax no. (703) 372-9314, on the date shown below. October 1, 2002 Israel Gopstein Registration No. 27,333
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